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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1938

No. 158

PACIFIC EMPLOYERS INSURANCE COMPANY,
Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and KENNETH TATOR,
Respondents.

BRIEF FOR RESPONDENTS.

EVERETT A. CORTEN,
State Building, San Francisco, California,
Attorney for Respondent, Industrial Accident Commission of the State of California.

GORDON S. KEITH,
FRANK J. CREEDE,
Mills Building, San Francisco, California,
Attorneys for Respondent, Kenneth Tator.

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BRIEF FOR RESPONDENTS.

QUESTION PRESENTED.

The sole question presented by this proceeding is whether or not the full faith and credit clause of the United States Constitution (Article IV, Section 1) under the circumstances here presented, requires the State of California to subordinate its workmen's compensation statute to the workmen's compensation statute of Massachusetts.

STATUTES INVOLVED.

In addition to the statutes referred to in Petitioner's brief under the above heading, Article XX, Section 21 of the California Constitution and Section I of the Workmen's Compensation Insurance & Safety Act of 1917 of the State of California, Chapter 586, California Stats. page 831 at 832 are pertinent and are appended. (Appendix pp. i-iv.)

STATEMENT OF FACTS.

Under the headings "Question Presented" and "Statement of Facts" Petitioner has not set out an entirely accurate or full statement of the facts and material circumstances in the case. Respondents feel called upon, therefore, to supply the Court with a more accurate and full statement of the facts and circumstances.

On October 17, 1935, Kenneth Tator sustained an injury while working at Oakland, California. (R. 41.) The injury was sustained while Tator was performing duties as a chemical engineer and research chemist in the Oakland plant or factory of his employer, the Dewey & Almy Chemical Company. (R. 41.) The Dewey & Almy Chemical Company is a Massachusetts corporation licensed to do business in the State of California. (R. 142.) The Dewey & Almy Chemical Company maintained its principal offices in Cambridge, Massachusetts, and also maintained and operated a plant or factory at Oakland, California. (R. 142.)

Tator performed a large part of his work in the research laboratory of his employer at Cambridge, Massachusetts, but at various times was sent out of that state on company business. He had been sent to California on one prior occasion in the early part of 1934. This was in the nature of an inspection or educational trip. (R. 36, 37.) During such trip Tator's salary and expenses were borne by the main office of the employer at Cambridge, Massachusetts. (R. 146, 148.)

In September, 1935, Tator received an order from the employer's general manager to report to the company's factory at Oakland, California. (R. 36.) The occasion for this order was the complaint of a customer of the company concerning an imperfection in a chemical compound which was manufactured at the Oakland, California, factory. (R. 34, 38, 39.) He arrived in Oakland and started work on September 17, 1935 (R. 147, 149) and he was still working at the Oakland factory on November 27, 1935, at which time his case was heard by the California Industrial Accident Commission. (R. 142, 149.) Tator's instructions on leaving Massachusetts were to eradicate a complaint relative to the chemical compound (R. 36, 140) and to wire to the Cambridge office of the company for directions as to where to go when he had completed his work in California. (R. 37.) Difficulties in another manufacturing process arose after the original problem had been solved and he continued working at the Oakland factory. (R. 35.)

On this occasion, unlike his prior educational trip, his traveling expense and salary while employed at Oakland were charged to the Oakland factory and borne by the California operations. Payment of his salary was actually made by the Cambridge office by making deposit to his personal bank account in Cambridge but the Cambridge office was reimbursed by the Oakland plant. (R. 145, 148, 149.) While in California he was an employee of the Oakland factory (R. 41), subject to the direction and control of its manager to the same extent as any other employee of the Oakland plant except that the Oakland manager's authority to discharge was limited in that he could discharge Tator from his employment at the Oakland factory but not from the general employ of the company. (R. 142, 143, 144, 145, 147.)

Tator had been in California thirty days when he sustained an injury to his right hand, which occurred when his hand was caught in the gears of a machine on which he was working. (R. 41, 137.) This injury necessitated immediate medical and surgical treatment and eventually resulted in the amputation of the index, middle, ring and little fingers, including the palm of the hand and several metacarpal bones, leaving Tator with the thumb and a small part of the palm of the right hand. (R. 41, 42, 43.)

At the time of Tator's injury, the Dewey & Almy Chemical Company carried workmen's compensation insurance covering its operations in California and in Massachusetts. The Hartford Accident & Indemnity Company insured it by a policy under which the

obligation of the insurer included the workmen's compensation law of Massachusetts. (R. 152.) This policy named Cambridge and Walpole, Massachusetts, as the location of work places of the employer. (R. 152.) The Petitioner, Pacific Employers Insurance Company, a California corporation, had issued a policy of workmen's compensation insurance insuring said company against the obligations imposed by the California Workmen's Compensation Act, and named the work places of the employer as the factory in Oakland and elsewhere in the State of California. (R. 152.)

After being injured, Tator made application to the Industrial Accident Commission of California for compensation, naming Dewey & Almy Chemical Company as his employer and Pacific Employers' Insurance Company as the insurance carrier. (R. 30A.) During the proceedings before the California Industrial Accident Commission, the Hartford Accident & Indemnity Company was joined as a defendant. (R. 32.) During said proceedings, lien claims on behalf of the physicians and surgeons, nurses and the hospital who had rendered services to Tator following his injury were made. The Industrial Accident Commission of California assumed jurisdiction over the claim of Tator and awarded compensation to him and awarded payment of bills for nursing services and awarded payment of medical and hospital bills directly to Drs. N. Austin Cary, J. Scott Quigley and Ergo A. Majors of Oakland, California, and to the Peralta Hospital of Oakland, California. It held Pacific Employers Insurance Company liable for the payment of compensa-

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tion and dismissed the Hartford Accident & Indemnity Company. It held Petitioner liable for the medical, hospital and nursing services rendered to Tator and directed Petitioner to pay such medical expenses. It also ordered that Petitioner furnish the further necessary medical attention, the attending physician having reported that a plastic operation would be necessary to improve the condition of Tator's hand. Tator was still under the care of Dr. Ergo Majors at the time of the hearing before the Industrial Accident Commission on November 27, 1935. (R. 40, 41, 42, 43.)

SUMMARY OF ARGUMENT.

It is now well settled that the true rule to be applied where the workmen's compensation statute of one state comes into conflict with the workmen's compensation statute of another state by being set up as a defense to a proceeding under the other statute is that the conflict is to be resolved not by giving automatic effect to the full faith and credit clause and thus compelling the Court of the forum to subordinate its own statute to the statute of the other state but by appraising the governmental interests of each jurisdiction and deciding accordingly.

Alaska Packers Assn. v. Industrial Accident Commission of California, 294 U. S. 532, 79 L. Ed. 1044, 55 S. Ct. 518;

Bradford Electric Light & Power Co. v. Clapper, 286 U. S. 145, 76 L. Ed. 1026, 52 S. Ct. 571;

Ohio v. Chattanooga Boiler & Tank Co., 289 U. S. 439, 77 L. Ed. 1307, 53 S. Ct. 663;
U. S. Casualty Co. v. Hoage, 77 Fed. (2d) 542.

Petitioner in substance contends that the Massachusetts Compensation Act is "exclusive"; that Sections 24 and 26 of that act have been construed by the Massachusetts Courts as precluding all recovery including proceedings under foreign workmen's compensation acts in cases where the contract of hire was made in Massachusetts and the injury happened in another state, the employee failing at the time of making the contract to give notice that he claimed the right to sue under common law or under the law of any other jurisdiction. Petitioner states the broad proposition that whenever a foreign compensation statute is set up as a defense to a proceeding under a local compensation statute that the forum by the superior force of the full faith and credit clause must subordinate its statute to the statute of the foreign state. Petitioner goes further and says that wherever the statute which is set up as a defense is an "exclusive" statute it constitutes a substantive defense which must be recognized as an absolute defense by the forum.

The contentions of Petitioner however show a misapprehension of the rules of law laid down by this Court in the cases cited above. The rule established by these cases is that there is to be no rigid, literal or automatic application of the full faith and credit clause when the workmen's compensation statutes of two states come into conflict; that on the contrary

there is to be some accommodation of the conflicting interests of the two states involved and the conflict is to be resolved by an appraisal of the governmental interests of each jurisdiction and by turning the scale of decision according to the weight of such interests. The "exclusiveness" of a statute is one of the factors or elements to be weighed; it is to be given proper but not controlling weight.

Alaska Packers Assn. v. Industrial Accident Commission, 294 U. S. 532, 79 L. Ed. 1044, 55 S. Ct. 518;

Bradford Electric Light & Power Co. v. Clapper, 286 U. S. 145, 76 L. Ed. 1026, 52 S. Ct. 571;

Ohio v. Chattanooga Boiler & Tank Co., 289 U. S. 439, 77 L. Ed. 1307, 53 S. Ct. 663.

Respondents contend that the "exclusiveness" or "non-exclusiveness" of a particular statute is not the controlling factor. In any event, the statute of Massachusetts is not "exclusive".

Massachusetts General Laws, Ter. Ed., Chapter 152, Secs. 24 and 26;

McLaughlin's Case, 274 Mass. 217, 174 N. E. 338;

Migues' Case, 281 Mass. 373, 183 N. E. 847.

In the present case California applied the correct rule in determining that the California workmen's compensation law under the circumstances of this case was the one to be applied. The California Industrial Accident Commission and the California Supreme Court appraised the governmental interest of the two

states involved and concluded that the interest of California was equal to or greater than that of Massachusetts and that Petitioner, upon whom the burden of proof lay, had not shown upon any rational basis that the interest of Massachusetts was superior to that of California. The California Supreme Court held that the particular factor or element which tipped the scale of decision in favor of California was the public policy of California as expressed in its Constitution, Workmen's Compensation Act, and in the decisions of its Courts. The California Supreme Court stated that it would be obnoxious to the public policy of California not to apply its workmen's compensation act under the circumstances of the case as not to do so would result in the failure of workmen as a class to receive immediate medical, nursing and hospital services; that it would result in prejudice to doctors, nurses and hospitals, and that the citizens of the state as a whole have an interest in seeing that injured workmen receive the compensation benefits due them under the Workmen's Compensation Act.

Pacific Employers Insurance Co. v. Industrial Accident Commission, 10 Cal. (2d) 567, 75 Pac. (2d) 567;

Western Indemnity Co. v. Pillsbury, 170 Cal. 686, 151 Pac. 398;

Western Metal Supply Co. v. Pillsbury, 172 Cal. 407, 156 Pac. 491, Ann. Cas. 1917E, 390;

Pacific Employers Ins. Co. v. French, 212 Cal. 139, 298 Pac. 23;

Independence Indemnity Co. v. Industrial Accident Commission, 2 Cal. (2d) 397, 404, 41 Pac. (2d) 320.

In addition to the factor of public policy there are many other important elements or factors which give California a real and substantial interest in the claim of the injured employee. The injury occurred in California under circumstances which would ordinarily entitle the employee to recover compensation. The employee was not a mere transient employee, the employer-employee relationship having been given a definite locus in California. The employer maintained a plant or factory in California and the employee while in California worked in that plant. The employer was licensed to do business in California and had taken out workmen's compensation insurance with a California workmen's compensation insurance carrier to cover his liabilities under the California workmen's compensation law. While working in California, the employee was subject to the supervision of the manager of the California plant, in the same manner as other employees of the plant with the exception that the manager of the plant if dissatisfied with the employee could discharge him from the California plant but not from the general employment of the employer. The employee had made a previous trip to California on which occasion his salary was borne by the Massachusetts office. On the occasion of his employment in California at the time of injury, however, his salary was charged to the California plant. The conduct of the employer therefore showed that the employer in this instance definitely considered that the employment had been given a locus in California.

The California Court therefore rightly held that the interest of Massachusetts under the circumstances of this case was not superior to that of California and that the refusal of California to subordinate its workmen's compensation statute to the workmen's compensation statute of Massachusetts did not transcend the constitutional limitations contained in the full faith and credit clause of the Federal Constitution.

I.

THE TRUE RULE TO BE APPLIED TO THIS CASE IS AS FOLLOWS: WHERE A FOREIGN WORKMEN'S COMPENSATION STATUTE IS SET UP AS A DEFENSE TO A PROCEEDING UNDER A LOCAL WORKMEN'S COMPENSATION STATUTE, THE CONFLICT IS TO BE RESOLVED, NOT BY GIVING AUTOMATIC EFFECT TO THE FULL FAITH AND CREDIT CLAUSE AND THUS COMPELLING THE COURT OF THE FORUM TO SUBORDINATE ITS OWN STATUTE TO THE STATUTE OF THE OTHER STATE, BUT BY APPRAISING THE GOVERNMENTAL INTERESTS OF EACH JURISDICTION AND DECIDING ACCORDINGLY.

A. Petitioner's Argument Shows Misapprehension of Rules Laid Down by this Court.

The subject of our inquiry in this case is whether the full faith and credit clause (Art. IV, Sec. 1, United States Constitution) requires the State of California to subordinate its own workmen's compensation statute and give effect to the workmen's compensation statute of Massachusetts rather than its own. Respondents earnestly submit that the State of California correctly assumed jurisdiction of the claim of the injured employee in this case and that such

assumption of jurisdiction together with the refusal to recognize the defense of the Massachusetts Workmen's Compensation Act as set up by Petitioner is not such an unreasonable application of the California Workmen's Compensation Act as to transcend the constitutional limitations contained in the full faith and credit clause of the Federal Constitution.

The major portion, if not all, of Petitioner's argument in this case shows a complete misapprehension of the holdings of this Court in *Alaska Packers Assn. v. Industrial Accident Commission of California,* 294 U. S. 532, 79 L. Ed. 1044, 55 S. Ct. 518; *Bradford Electric Light & Power Co. v. Clapper,* 286 U. S. 145, 76 L. Ed. 1026, 52 S. Ct. 571; and *Ohio v. Chattanooga Boiler & Tank Co.,* 289 U. S. 439, 77 L. Ed. 1307, 53 S. Ct. 663. Petitioner, first of all, contends that the Massachusetts Workmen's Compensation Act is "exclusive"; that it, like the Vermont Act considered by this Court in the *Bradford Electric Light Co. v. Clapper* case, supra, is intended to preclude recovery under the laws of all other jurisdictions where the contract of hire was entered into in Massachusetts and the employee at the time of making the contract failed to give written notice that he claimed the right to proceed under common law or under the laws of any other jurisdiction. Based upon this premise, Petitioner contends that the full faith and credit clause automatically compels California to give up its jurisdiction over the claim filed by the injured employee, Tator, with the Industrial Accident Commission of that state. In furtherance of this argument, Peti-

tioner seemingly contends (Heading III, p. 13 et seq. of Petitioner's Brief) that full faith and credit must be given *in all cases* by the Courts of one state to the statute of a second state where such statute is set up as a defense to an action brought in the first state. Petitioner further argues (Heading IV, p. 17 et seq. of Petitioner's Brief) that where a workmen's compensation act of the foreign state is "exclusive" and the statute is set up as a defense it is then not permissible to balance the interests of the two states involved in order to determine which statute should prevail over the other.

Respondents submit that the foregoing propositions advanced by Petitioner are based upon a misapprehension of the rules of law set out by this Court in the various decisions treating of the subject under inquiry. As we understand the rules to be deduced from the decisions of this Court, there is to be no rigid, literal or automatic application of the full faith and credit clause when the workmen's compensation statutes of two states come into conflict; where the workmen's compensation statutes of two states come into conflict there is to be some accommodation of the conflicting interests of the two states involved; the conflict is to be resolved by an appraisal of the governmental interests of each jurisdiction and by turning the scale of decision according to their weight; in such case the statute of one state may sometimes override the conflicting statute of another both at home and abroad and the two conflicting statutes may each prevail over the other at home although given no extra-

territorial effect in the state of the other; that this Court will determine for itself the extent to which the statute of one state may qualify or deny rights asserted under the statute of another.

Alaska Packers Association v. Industrial Accident Commission, 294 U. S. 532, 79 L. Ed. 1044, 55 S. Ct. 518;

Bradford Electric Light & Power Co. v. Clapper, 286 U. S. 145, 76 L. Ed. 1026, 52 S. Ct. 571;

Ohio v. Chattanooga Boiler & Tank Co., 289 U. S. 439, 77 L. Ed. 1307, 53 S. Ct. 663.

This Court has not stated that where the statute which is set up as a defense is an "exclusive" one, there can be no appraisal of the governmental interests of the two states involved. On the contrary, this Court has clearly stated, in the *Alaska Packers* case, supra, that whether the statutes which are brought into conflict are "exclusive" or "non-exclusive", the conflict is to be resolved by appraising the governmental interests of each state and turning the scale according to the weight of such interests. And in the appraisal of the governmental interests the fact of "exclusiveness" of the statute set up as a defense is to be considered and weighed as is any other circumstance or factor. The "exclusiveness" of a statute is to be given its proper weight but is not to be given controlling weight in the process of balancing the respective interests of the states involved. At first blush it may appear that this Court in the *Bradford Electric Light Co. v. Clapper* case, after determining

the statute which was set up as defense was "exclusive", automatically applied the full faith and credit clause. That this Court did not automatically apply the full faith and credit clause and that it did in fact balance the interests of the two states involved by weighing all the circumstances, is clearly shown by the Court in its discussion of that case in the opinion in the *Alaska Packers* case, supra. In the latter case this Court stated as follows (294 U. S. 532, at 548):

> "* * * *There, upon an appraisal of the governmental interests of the two states,* Vermont and New Hampshire, it was held that the compensation act of Vermont, where the status of employer and employee was established, should prevail over the conflicting statute of New Hampshire, where the injury occurred and the suit was brought. In reaching that conclusion, weight was given to the following circumstances: That liability under the Vermont act was an incident of the status of the employer and employee created within Vermont, and, as such, continued in New Hampshire where the injury occurred; that it was a substitute for a tort action, which was permitted by the statute of New Hampshire; that the Vermont statute expressly provided that it should extend to injuries occurring without the state and was interpreted to preclude recovery by proceedings brought in any other state; and that there was no adequate basis for saying that the compulsory recognition of the Vermont statute by the courts of New Hampshire would be obnoxious to the public policy of that state." (Italics ours.)

Petitioner's Heading "III" (Petitioner's Brief p. 13) reads as follows: "Under Article IV, Section 1

of the Federal Constitution, Full Faith and Credit Must be Given by the Courts of One State to the Statute of Another State Which is Set Up As a Defense to An Action Brought in the First State."

If the broad proposition set out in this heading were an accurate statement of the law, then our inquiry would be at an end. There would be no room whatever for the accommodation of conflicting interests of the two states involved and when the statute of one state is set up as a defense to a statute of another state and comes into conflict therewith full faith and credit must automatically be accorded to the conflicting statute by the forum. This would mean a rigid and literal enforcement of the full faith and credit clause. There is nothing in the history of the full faith and credit clause to warrant such a broad statement and this Court has very recently taken occasion specifically and finally to answer such a contention. In the *Alaska Packers* case, supra, this Court stated (294 U. S. 532, at 547):

> "A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other but cannot be in its own."

Under this heading (Heading III) Petitioner seems to reason that if a statute which is set up as a defense is "exclusive" the fact of exclusiveness constitutes it a "substantive" defense and full faith and credit in all such cases must be accorded; in such case Peti-

tioner contends a balancing of the interests of the two states involved is not permitted.

The rule applicable to "substantive" defenses is only that such a defense must be considered by the Court of the forum and may not be disregarded merely because it conflicts with the law of the forum. (*John Hancock Mutual Life Ins. Co. v. Yates*, 299 U. S. 178.) In the instant case the Supreme Court of California did not disregard or refuse to consider the Massachusetts statute raised as a defense. On the contrary, the Court gave it full consideration but held that it should not be applied to the facts in this case because to do so would be obnoxious to the declared public policy of the State of California. Petitioner errs in considering "substantive" as synonymous with "exclusive".

Heading IV of Petitioner's argument (Petitioner's Brief p. 17) and the argument thereunder further advances the same theory as set out under Heading III, Petitioner again making the broad statement that where a statute of a foreign state constitutes a substantive defense a conflict between said statute of the foreign state and the statute of the forum cannot be resolved by appraising the governmental interests of each jurisdiction. Under this heading Petitioner attempts to distinguish or limit the holding of this Court in the *Alaska Packers* case, supra, on the ground that there was no real conflict between the Alaska statute and the California statute. The first answer to this contention is that it seems obvious that if there were no conflict there would have been no federal question

and this Court would not have considered the case. Secondly, this Court in the *Alaska Packers* case, supra, specifically answered this argument. At page 545 (294 U. S. 532) the Court said:

> "Since each statute provides a different remedy, the court recognized that, by setting up the Alaska statute as a defense to the award of the Commission, *the two statutes were brought into direct conflict.* It resolved the conflict by holding that the courts of California were not bound by the full faith and credit clause to apply the Alaska statute instead of its own.
>
> "To the extent that California is required to give full faith and credit to the *conflicting Alaska statute,* it must be denied the right to apply in its own courts a statute of the state, lawfully enacted in pursuance of its domestic policy." (Italics ours.)

Petitioner (at p. 19 of its Brief) states that this Court in the *Alaska Packers* case, supra, has limited the doctrine of balancing of interests "to cases where the forum has jurisdiction over the contract of hire". Petitioner apparently means the state wherein the contract was made. There is no such limitation in the language of the Court even though in that case it was considering a case wherein the forum was also the place in which the contract of hire was made. The place of contract is only one of the elements to be considered in weighing the governmental interests of the state involved.

The rule stated above and contended for by Respondents has been applied in the case of *U. S. Casualty Co. v. Hoage,* 77 Fed. (2d) 542.

The Restatement of the Law of Conflict of Laws adopted by the American Law Institute on May 11, 1934, likewise supports the rule contended for by Respondents. Section 402 of the Restatement under the above heading states the rule as follows:

> "Sec. 402. Effect of Two Acts Governing Injury.
>
> Proceedings may be brought in a state under the Workmen's Compensation Act of that state, if it is applicable, although the Act of another state also is applicable."

B. The Correct Test Was Applied by the California Supreme Court in this Case.

The California Supreme Court in the present case properly used the "balancing of the interests" test in determining whether California should subordinate its statute to that of Massachusetts. In its order setting aside its submission of the case and setting the case down for further argument, the California Supreme Court proposed this question, which clearly shows its view as to what test is to be applied (R. 53):

> "Assuming that the Massachusetts statute, as interpreted by its courts, exclusively governs liability for the industrial injury involved in this case, are there any facts in the record which establish a sufficient governmental interest in the State of California, to warrant the taking of jurisdiction and the making of an award of compensation? In this connection counsel are requested to consider particularly the effect of the decision in Alaska Packers Assn. v. Industrial Accident Commission, 294 U. S. 532."

In its opinion in the case the California Supreme Court likewise indicated that it had the true test in mind when it stated (10 Cal. (2d) 567, 576, R. 71):

> "Upon the principles which have been stated and applied in these cases, Mr. Tator cannot recover compensation in California unless this state has a governmental interest in the controversy superior to that of Massachusetts."

This is a correct statement of the rule except for the failure to indicate that the burden of proof is upon him, who challenges the right of the forum to apply its law, to demonstrate upon some rational basis that the interests of the foreign state are far superior to the interests of the forum.

In the present case, therefore, the proper test has been used in determining which of the two conflicting statutes should prevail. In applying that test it is submitted that it will be found by this Court, as it was by the California Supreme Court, that the interests of California weigh more heavily than those of Massachusetts in the scale of decision, and that no rational basis has been shown by Petitioner why California is to be denied the right to apply her own law to the case at bar.

C. Discussion of the Effect of the Massachusetts Statute.

Respondents contend that the peculiar wording of a compensation statute is not the controlling factor in determining the conflict between the compensation statutes of sister states under the full faith and credit clause of the United States Constitution. If any one

state could control the policy of a sister state by the strong language of its statutes, it could by this means invade the sovereignty of another state. Such a construction would invite a matching of wits between the legislatures of the various states to determine which legislature could use the most "exclusive" words in the section of its compensation statutes governing injuries occurring outside its jurisdiction.

Because of our conviction that the particular wording of any compensation statute is not the controlling factor in determining the conflict between the compensation statutes of one state and that of another, we shall not enter into an extensive analysis of Sections 24 and 26 of the Massachusetts Compensation Laws (Massachusetts General Laws, Ter. Ed. Chapter 152), or the cases of *McLaughlin's Case,* 274 Mass. 217, 174 N. E. 338, and *Migues' Case,* 281 Mass. 373, 183 N. E. 847. However, for the following reasons we do not concede that the sections in question are "exclusive" in the sense in which Petitioner uses that term and that the Massachusetts Supreme Court has so interpreted them:

Section 24 refers to and prohibits only actions at common law or statutory damage actions under the laws of another jurisdiction to recover *damages* for personal injuries.

Section 26 grants those employees who have not given notice of claim of common law rights of action the right to recover compensation under the Massachusetts Act for injuries sustained in the course of the employment occurring either within or without the Commonwealth of Massachusetts.

These sections, either considered separately or read together, are not comparable to the Vermont statute termed "exclusive" in character by this Court in the case of *Bradford Electric Light Co. v. Clapper,* 286 U. S. 145. Moreover, the sections in question have not been given the broad interpretation claimed by Petitioner in *McLaughlin's Case* and *Migues' Case,* supra. While *McLaughlin's Case,* supra, refers to the full faith and credit clause, the Court apparently did not believe that issue pertinent to the facts in that particular case as the Court comments that McLaughlin had not been before the New Hampshire Courts. The *Migues* case, supra, states that the ruling in that case is controlled by the *McLaughlin* case and does not discuss the full faith and credit clause although it cites the *Bradford Electric Light Co.* case, supra, in support of its decision. The decisions in those cases were based primarily on the fact that acceptance of voluntary payments by an insurance carrier of benefits under the laws of New Hampshire and Rhode Island would not prevent a Massachusetts employee from obtaining the full benefits of the Massachusetts Compensation Law by a subsequent proceeding in Massachusetts.

II.

IN BALANCING THE INTERESTS OF THE TWO STATES INVOLVED, CALIFORNIA'S INTEREST IN THIS CASE IS EQUAL TO OR GREATER THAN THE INTEREST OF MASSACHUSETTS, AND CALIFORNIA'S STATUTE SHOULD THEREFORE PREVAIL.

A. The Burden of Proof.

The burden of proof was clearly upon Petitioner to establish that the interest of Massachusetts so far outweighed that of California that California, by reason of the superior force of the full faith and credit clause, should subordinate her statute to the statute of Massachusetts.

In the *Alaska Packers* case, supra, this Court stated (294 U. S. 532, at 547):

> "*Prima facie* every state is entitled to enforce in its own courts its own statutes, lawfully enacted. One who challenges that right, because of the force given to a conflicting statute of another state by the full faith and credit clause, assumes the burden of showing, upon some rational basis, that of the conflicting interests involved those of the foreign state are superior to those of the forum. * * *"

Respondents respectfully submit that Petitioner in the present case has not borne the burden of showing upon any rational basis that the Workmen's Compensation Act of Massachusetts should prevail over that of California.

B. To Enforce the Massachusetts Statute in the Present Case Would be Obnoxious to the Public Policy of California.

The public policy of the forum is one of the most important circumstances or factors to be considered in weighing the interests of the two states whose statutes have come into conflict. The California Supreme Court properly gave great weight to this factor in determining that no rational basis had been shown why California should not apply her workmen's compensation statute in the present case.

There are many limitations in the application of the full faith and credit clause even with respect to the enforcement of foreign judgments.

State of Wisconsin v. Pelican Insurance Co., 127 U. S. 265, 8 S. Ct. 1370, 32 L. Ed. 239;

Huntington v. Attrill, 146 U. S. 657, 13 S. Ct. 224, 36 L. Ed. 1123;

Finney v. Guy, 189 U. S. 335, 22 S. Ct. 558, 47 L. Ed. 839;

Clarke v. Clarke, 178 U. S. 186, 20 S. Ct. 873, 44 L. Ed. 1028;

Hood v. McGehee, 237 U. S. 611, 35 S. Ct. 718, 59 L. Ed. 1144.

In addition to such limitations this Court has recognized that one state will not be forced to subordinate its statute to the statute of another state where to do so would be obnoxious to the public policy of the first state.

In the *Alaska Packers'* case, supra, this Court stated as follows (294 U. S. 532, at 546):

"It has often been recognized by this Court that there are some limitations upon the extent to which a state will be required by the full faith and credit clause to enforce even the judgment of another state, in contravention of its own statutes or policy. (Citing cases.)

In the case of statutes, the extra-state effect of which Congress has not prescribed, where the policy of one state statute comes into conflict with that of another, *the necessity of some accommodation of the conflicting interests of the two states is still more apparent*: A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own. * * *" (Italics ours.)

The *Bradford Electric* case and the *Alaska Packers* case, supra, are both examples of the importance to be attached to the public policy of the forum where a statute of another state has come into conflict with that of the forum. In the *Bradford* case, supra, it is evident that the decision of this Court might well have been different had there been an expression by the highest Court of New Hampshire that to subordinate its statute to that of Vermont would have been obnoxious and detrimental to the public policy of New Hampshire. In that case, however, there was no expression by the highest Court of New Hampshire one way or the other as to the public policy of New Hampshire due to the fact that

the case was transferred from the State Court to a Federal Court on the grounds of diversity of citizenship. In that case this Court, speaking through Justice Brandeis, indicated that it regarded the absence of an expression of opinion by the State Court on this point as being important (286 U. S. 145 at 161):

> "Moreover, there is no adequate basis for the lower court's conclusion that to deny recovery would be obnoxious to the public policy of New Hampshire. *No decision of the state court has been cited* indicating that recognition of the Vermont statute would be regarded in New Hampshire as prejudicial to the interests of its citizens." (Italics ours.)

In the *Alaska Packers* case this Court in comparing the *Bradford Electric* case with the *Alaska Packers* case, with respect to the factor of public policy, stated as follows (294 U. S. 532 at 549):

> "While in Bradford Electric Light Co. v. Clapper, supra, it did not appear that the subordination of the New Hampshire statute to that of Vermont, by compulsion of the full faith and credit clause, would be obnoxious to the policy of New Hampshire, the Supreme Court of California has declared it to be contrary to the public policy of the state to give effect to the provisions of the Alaska statute and that they conflict with its own statutes."

Thus it is seen that where, as in the *Alaska Packers* case, the highest Court of the forum has declared that it would be obnoxious to its public policy

to subordinate its statute to a foreign statute which had been set up as a defense, this Court will give great weight to this circumstance and has held in such case that ordinarily there is no compulsion by virtue of the full faith and credit clause which will force the state of the forum to give effect to the foreign statute. Where, however, there has been no expression of public policy by the Courts of the forum a different situation exists and the full faith and credit clause will be applied freely, for it then may be assumed that the application of the clause would not be prejudicial to any of the forum's interests or policies.

In the case at bar there is the strongest conceivable kind of expression by the highest Court of California to the effect that to subordinate its statute in the present instance to the statute of Massachusetts would be obnoxious to the public policy of California. It is further apparent that the expression of public policy is not alone the opinion of the highest Court but is contained in the Workmen's Compensation Act of California (Sec. 1, Appendix p. iii) and in the supreme law of that state, namely, its Constitution. (Art. XX, Sec. 21, Appendix p. i.) The Supreme Court of California has declared that it is the public policy of California, particularly under the circumstances of this case, to render immediate medical treatment to the injured workman. It has stated that to force doctors, nurses and hospitals to attempt to collect their bills for services rendered to the injured employee elsewhere than

before the Industrial Accident Commission of the State of California is to make less certain the rendition of such medical, hospital and nursing services and will result in harm and prejudice to workmen as a class, to the doctors, nurses and hospitals who have rendered services and to the citizens of the state generally. The Supreme Court of California, in this case, stated as follows (10 Cal. (2d) 567 at 576):

> "The modern view that the cost of industrial injuries is properly a part of the expense of production underlies all workmen's compensation laws. (Western Ind. Co. v. Pillsbury, 170 Cal. 686 (151 Pac. 398).) The public has a direct interest in the results of industrial accidents. When the injured employee had only a right of action for damages, he too often became an object of charity. Even under present laws the public bears some part of the expense of such accidents in addition to the amount which is added to the cost of manufacture. The public, therefore, is vitally concerned to see that adequate medical care is furnished to those injured. Indeed, the constitutional amendment adopted in 1918 which vested the legislature with plenary power to create and enforce a complete system of workmen's compensation defines such a system as including 'full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury'. (Art. XX, sec. 21.) The workmen's compensation law uses this same language in prescribing the medical and hospital treatment which an employer must furnish. (Sec. 9a.) Even before these enactments

this court recognized the important place medical care has in the administration of workmen's compensation when it said: 'Compensation means more than a mere cash payment to an individual. Compensation to employees for injuries incurred by them may fairly be said to mean not only a money payment to the employee himself, but provision or indemnification for the various elements of loss which may be the direct result of his injury. It includes, for example, the obligation to provide medical and surgical treatment (sec. 15, subd. a)—an obligation which does not necessarily involve payment in cash to the employee himself.' (Western Metals Supply Co. v. Pillsbury, 172 Cal. 407 (156 Pac. 491, Ann. Cas. 1917E, 390).)

An award for medical expense cannot be made in favor of a physician in a proceeding to which the injured employee is not a party (Pacific Employers Ins. Co. v. French, 212 Cal. 139 (298 Pac. 23), but a physician who has rendered medical aid to a compensable employee may maintain an application to recover the value of his services in a proceeding in which both the employer and employee are named as defendants. Such a physician is a party in interest because an effective administration of the workmen's compensation act both assures and requires adequate medical care and treatment. This court has said: 'As a practical matter, injured employees as a class will receive better and more willing medical service if remuneration for such services from an employer or insurance carrier is assured to doctors and hospitals than if instances may arise in which, if an employee neglects to file a claim for compensation, after

the services have been rendered, such doctors and hospitals may be required to look only to the injured employee for compensation. It should be borne in mind that the medical, surgical and hospital treatment which is intended to be assured to injured employees, as one of the items of their compensation by the act, will be more certain to be furnished if doctors and hospitals are assured of certain remuneration for their services.' (Independence Indem. Co. v. Industrial Acc. Com., 2 Cal. (2d) 397, 404 (41 Pac. (2d) 320).)

The public policy of California upon this question has been clearly and positively stated in the Constitution, the workmen's compensation law which was enacted pursuant to it, and the decisions of this court. It would be obnoxious to that policy to deny persons who have been injured in this state the right to apply for compensation when to do so might require physicians and hospitals to go to another state to collect charges for medical care and treatment given to such persons. Under these circumstances the governmental policy of California weighs more heavily in the scale of decision than the law of Massachusetts and the conflict in laws must be resolved in favor of the state where the injury occurred."

We believe that Petitioner has misconceived the guilding principle behind the constitutional provision of the State of California and the decision of the Supreme Court of California in interpreting that provision. The Supreme Court of California did not hold that it would be obnoxious to the public policy

of the State of California to enforce the Massachusetts statute in this case on the narrow ground that to do so would force California doctors and hospitals to sue in Massachusetts on bills due for medical and hospital service. The State, it is true, has a legitimate public interest in seeing that doctors, nurses and others who render services to injured employees are protected from financial loss. The Court, however, based its holding on the broader ground that as a matter of sound public policy, the State of California in the proper exercise of its police power, enacted legislation which was for the benefit of injured employees as a class. In order to make that legislation practically effective it is necessary to encourage doctors and hospitals to give not only emergency medical treatment but to give adequate treatment which in many cases necessitates special nurses, expensive X-ray and laboratory work, blood transfusions, etc., in order that life and limb may be conserved. If doctors and hospitals have no assurance that injured employees while working in industrial plants in the State of California are entitled to this treatment it will have a tendency to make them hesitate to furnish adequate treatment at the time when it is needed most. Hence, all injured employees as a class will suffer as a result of the uncertainty of the law and the social evil attempted to be cured by the Legislature in passing the Workmen's Compensation Act will be defeated.

C. Other Considerations and Circumstances Which Give California a Governmental Interest Equal to or Greater Than That of Massachusetts.

While Respondents believe that the reason assigned by the California Supreme Court as the basis for its decision, namely, that to subordinate its statute to that of Massachusetts would be obnoxious to the public policy of California is a valid and sufficient basis for its holding, we submit that there exist other circumstances in the case which show that California has a governmental interest equal to or greater than that of Massachusetts.

The injury indisputably occurred in California. While this circumstance, standing alone, may not be sufficient to establish the interest of California as greater than that of Massachusetts, where this circumstance is combined with a number of other important factors or circumstances, as in this case, the State of injury is given a real interest in the matter.

The employer-employee status had been given a locus in California. While the status or relationship of employer and employee was created in Massachusetts, where the employee resided and where the home office of the employer was located, it is our contention that the employer-employee relationship in this case had been given a definite locus in California. The Industrial Accident Commission found in its findings and award that Tator was employed by the Oakland branch of the Dewey and Almy Chemical Company, the employer. (R. 41.) While Respondents conceded in the State Court, and do so here, that this finding was not intended to mean

that a new and different contract of employment had been entered into when Tator came to California, it nevertheless shows that the Industrial Accident Commission was convinced by the facts and circumstances of the case that the parties had given that relationship a definite locus in California and had submitted themselves to the jurisdiction of California. In this connection, it is well to note that the employer was licensed to do business in California and maintained a permanent plant or factory at Oakland, California.

The employer qualified under the corporation laws of the State of California and the pertinent constitutional provisions which provided, among other things, that the employer would not be allowed to do business in California on more favorable terms than domestic corporations. (Article XII, Sec. 15, California Constitution, Treadwell's Constitution of California, sixth edition, page 708.) In so qualifying it voluntarily submitted itself to the laws of California and to the jurisdiction of its Courts.

The employer further indicated its intention of submitting to the jurisdiction of the California Courts by taking out a workmen's compensation policy in California covering the liability under the California Workmen's Compensation Act.

Moreover, the conduct of the employer itself in this instance showed that it considered Tator something more than a transient or "overnight" employee. It will be remembered that on a prior occasion Tator had made a visit to California on what

might be called an educational trip or tour. On that occasion the Massachusetts office paid his salary. In the present instance, however, the California plant was charged with Tator's salary. This salary charge against the California plant would show on the books of the California plant which were open to inspection by the California insurance carrier which could include Tator's salary in figuring the premium charges. The books of the Massachusetts office would show that after said office had deposited Tator's salary to his personal account in the bank that it was reimbursed for these sums by the California plant and the Massachusetts insurance carrier would not then make a premium charge upon Tator's salary. The conduct of the employer therefore definitely shows that on this occasion Tator was in the position of being transferred from one permanent plant of the employer to another and that he was considered to be an employee of the California plant during his stay here.

The primary purpose of the passage of the Workmen's Compensation Laws in California was to make California industry bear the cost of its industrial injuries, to alleviate the distress of injured workmen, and to make certain that they did not become public charges following injury. In this particular case, Tator's injury, though very serious, incapacitated him but a short period of time. It does not follow, however, that others more seriously injured under similar circumstances would not become public charges. If Tator had been paralyzed

by the injury or received a crushing injury which would require hospitalization of a year or more, he would have been unable to leave California and, unless the remedies of the California Compensation Act were immediately available as contemplated by the Act, he would have no alternative but to resort to public charity. This would have created a situation which followed all industrial accidents prior to the passage of the Compensation Act of California and which that Act was intended to prevent. The decision in this case will create a precedent which will apply not only to Tator but to all in his class.

Respondents wish to urge upon the Court the desirability for flexibility of venue in this type of case. As between two states having a real interest in the relationship, the injured employee should be allowed a choice as to the state in which he will seek his remedy. An inflexible rule that would force him to go back to the state of hire would work a real hardship on the employee in many instances for time and expense are important considerations in such cases. In many instances it will be impossible for him to return to the state of hire; in others, it at least will be extremely costly. In a majority of cases the facts of the injury must be proven by eye witnesses who are in the state of injury and who will not be available in the state of hire. California is three thousand-odd miles from Massachusetts and it cannot be argued as a practical matter that Tator could have as readily pursued his remedy in Massachusetts as in California. The time involved and the

expense incident to the trip alone would render the prosecution of a case in Massachusetts impossible to the average person injured under circumstances similar to Tator. All the persons and parties necessary to a proper determination of Tator's claim were in California at the time of injury. This Court gave weight to similar considerations in the *Alaska Packers* case, supra, and it is submitted that there exists a like situation in the present case. One of the underlying reasons for the passage of Workmen's Compensation Acts was the fact that they would afford an expeditious and inexpensive remedy to the injured workman. If the workman is not allowed his choice of venue as between two states having a real interest the beneficial purpose of the Workmen's Compensation Acts will be defeated.

D. The Decision of the California Supreme Court is Economically Sound.

There is no basis in fact for the economic argument (p. 26 of Petitioner's Brief) advanced that employers cannot, with convenience, obtain insurance against liability for compensation in the various states of the Union if they do or anticipate doing business in various states. The majority of leading casualty companies do business on a nationwide basis and the customary practice of companies doing a nationwide business is to procure one blanket policy which provides that the employer is to be indemnified against loss he may sustain by reason of any claim made by an employee in any state in the United States for either damages or compensation. Many policies are extended to cover not only the

liability imposed by the several states but also liability imposed by the laws of Canada and Mexico. Compensation insurance rates are based upon payroll expenditure and there is no increased charge made for the employee whose business carries him into another state. The accountants' problem conjured by Petitioner in its argument to the effect that it would be an impossibility to pro-rate payrolls does not exist because modern insurance practice does not demand it as the work of computation is not worth the cost.

However, some employers, particularly those that have fixed plants in different states, for various business reasons of their own, often prefer to and do carry separate policies of compensation covering their liability in each state in which they have a plant. The Dewey & Almy Chemical Company took out a policy in Massachusetts and a policy in California. Its liability under the law of either state is fully covered by insurance. When it was licensed by the State of California to do business in California as a foreign corporation, it agreed to accept the benefits and the burdens of all applicable California laws, one of which was the Compensation Law of the State of California. It met the requirements of that law by taking out insurance with the Petitioner, a California insurance company that does business in California state only, and agreed to pay the usual premium therefor. The situation in this case is therefore not one of an employee who is merely passing through one state on his way to or from his principal office but of an employee who has been

transferred from one fixed plant of his employ to another and who is protected at both plants by policies of insurance taken out by the employer to cover any liability he may have to this employee and others while working at either plant.

CONCLUSION.

Respondents respectfully submit that Petitioner, upon whom the burden of proof lay, has not shown upon any rational basis that the governmental interest of the State of Massachusetts in this case is superior to the governmental interest of the State of California. It is therefore respectfully prayed that the decision of the Supreme Court of California be affirmed.

Dated, San Francisco, California,
November 25, 1938.

EVERETT A. CORTEN,
Attorney for Respondent,
Industrial Accident Commission
of the State of California.
GORDON S. KEITH,
FRANK J. CREEDE,
Attorneys for Respondent,
Kenneth Tator.

(Appendix Follows.)

provision of the Constitution of the State of nia, which has a bearing on this case, is as :

. XX. Sec. 21. The Legislature is hereby ly vested with plenary power, unlimited by rovision of this Constitution, to create and e a complete system of workmen's compen- by appropriate legislation, and in that behalf te and enforce a liability on the part of any persons to compensate any or all of their en for injury or disability, and their depend- or death incurred or sustained by the said en in the course of their employment, irre- e of the fault of any party. A complete sys- f workmen's compensation includes adequate ions for the comfort, health and safety and l welfare of any and all workmen and those lent upon them for support to the extent of ng from the consequences of any injury or ncurred or sustained by workmen in the course ir employment, irrespective of the fault of arty; also full provision for securing safety ces of employment; full provision for such l, surgical, hospital and other remedial treat- as is requisite to cure and relieve from the of such injury; full provision for adequate nce coverage against liability to pay or fur- compensation; full provision for regulating nsurance coverage in all its aspects, including

the establishment and management of a State Co
pensation Insurance Fund; full provision for othe
wise securing the payment of compensation; and fu
provision for vesting power, authority and jurisdi
tion in an administrative body with all the requisi
governmental functions to determine any dispute
matter arising under such legislation, to the end th
the administration of such legislation shall accor
plish substantial justice in all cases expeditiously, i
expensively, and without incumbrance of any chara
ter; all of which matters are expressly declared
be the social public policy of this State, bindi
upon all departments of the State government.

"The Legislature is vested with plenary powe
to provide for the settlement of any disputes arisi
under such legislation by arbitration, or by an I
dustrial Accident Commission, by the courts, or
either, any, or all of these agencies, either separate
or in combination, and may fix and control t
method and manner of trial of any such dispute, t
rules of evidence and the manner of review of de
sions rendered by the tribunal or tribunals desi
nated by it; provided, that all decisions of any su
tribunal shall be subject to review by the appella
courts of this State. The Legislature may combi
in one statute all the provisions for a complete sy
tem of workmen's compensation, as herein define

"Nothing contained herein shall be taken or co
strued to impair or render ineffectual in any measu
the creation and existence of the Industrial Accide
Commission of this State or the State Compensati

Insurance Fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed. (Amendment adopted November 5, 1918.)"

* * * * * * *

The applicable provision of the Workmen's Compensation Act of California not included in Petitioner's brief is Section 1 of Chapter 586, Laws of 1917 of the State of California, is as follows:

"Section 1. This act and each and every part thereof is an expression of the police power and is also intended to make effective and apply to a complete system of workmen's compensation the provisions of section seventeen and one-half of article twenty and section twenty-one of article twenty of the Constitution of the State of California. A complete system of workmen's compensation includes adequate provision for the comfort, health, safety and general welfare of any and all employees and those dependent upon them for support to the extent of relieving from the consequences of any injury incurred by employees in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment, full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury, full provision for adequate insurance coverage against the liability to pay or furnish compensation, full provision for regulating such insurance coverage in all its aspects including the establish-

ment and management of a State Compensati
Insurance Fund, full provision for otherwise secu
ing the payment of compensation, and full provisi
for vesting power, authority and jurisdiction in
administrative body with all the requisite gover
mental functions to determine any matter arisi
under this act to the end that the administration
this act shall accomplish substantial justice in
cases expeditiously, inexpensively and without incu
brance of any character; all of which matters co
tained in this section are expressly declared to
the social public policy of this State, binding up
all departments of the State government."

P. 2

SUPREME COURT OF THE UNITED STATES.

No. 158.—October Term, 1938.

Pacific Employers Insurance Company, Petitioner, *vs.* Industrial Accident Commission of the State of California and Kenneth Tator.	On Writ of Certiorari to the Supreme Court of the State of California.

[March 27, 1939.]

Mr. Justice Stone delivered the opinion of the Court.

The question is whether the full faith and credit which the Constitution requires to be given to a Massachusetts workmen's compensation statute precludes California from applying its own workmen's compensation act in the case of an injury suffered by a Massachusetts employee of a Massachusetts employer while in California in the course of his employment.

Petitioner, an insurance carrier, under the California Workmen's Compensation, Insurance and Safety Act, for the Pacific Coast branch of the employer, Dewey & Almy Chemical Company, a Massachusetts corporation, filed its petition in the California District Court of Appeal to set aside an award of compensation to an employee by the California Industrial Accident Commission. The grounds of the petition were, among others, that the employee, because he was regularly employed at the head office of the corporation in Massachusetts and was temporarily in California on the business of the employer when injured there, was subject to the workmen's compensation law of Massachusetts, and that the California Commission, in applying the California Act and in refusing to recognize the Massachusetts statute as a defense, had denied to the latter the full faith and credit to which it was entitled under Article IV, § 1 of the Constitution. The order of the District Court of Appeal denying the petition was affirmed by the Supreme Court of California. 10 Cal. (2d) 567. We granted certiorari October 10, 1938, the question presented being of public importance.

The injured employee, a resident of Massachusetts, was regularly employed there under written contract in the laboratories of the Dewey & Almy Chemical Company as a chemical engineer and research chemist. In September, 1935, in the usual course of his employment he was sent by his employer to its branch factory in California, to act temporarily as technical adviser in the effort to improve the quality of one of the employer's products manufactured there. Upon completion of the assignment he expected to return to the employer's Massachusetts place of business, and while in California he remained subject to the general direction and control of the employer's Massachusetts office, from which his compensation was paid.

He instituted the present proceeding before the California Commission for the award of compensation under the California Act for injuries received in the course of his employment in that state, naming petitioner as insurance carrier under that Act; the Hartford Accident & Indemnity Company, as insurer under the Massachusetts Act, was made a party. The California Commission directed petitioner to pay the compensation prescribed by the California Act, including the amounts of lien claims filed in the proceeding for medical, hospital and nursing services and certain further amounts necessary for such services in the future.

By the applicable Massachusetts statute, §§ 24, 26, c. 152, Mass. Gen. Laws (Ter. Ed. ~~1933~~ 1932), an employee of a person insured under the Act, as was the employer in this case, is deemed to waive his "right of action at common law or under the law of any other jurisdiction" to recover for personal injuries unless he shall have given appropriate notice to the employer in writing that he elects to retain such rights. Section 26 directs that without the notice his right to recover be restricted to the compensation provided by the Act for injuries received in the course of his employment, "whether within or without the commonwealth." See *McLaughlin's Case*, 274 Mass. 217; *Migues' Case*, 281 Mass. 373.

Article XX, § 21 of the California Constitution vests the legislature with plenary power "to create and enforce a complete system of workmen's compensation", including "adequate provisions for the comfort, health and safety and general welfare" of employees injured in the course of their employment, and their dependents, and to make "full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from

the effects of such injury". Sections 6, 9 and 29 of the California Workmen's Compensation, Insurance and Safety Act, Cal. Gen. Laws (Deering 1931) Act 4749, provide for compensation from insurance procured by the employer, in prescribed amounts, for injuries received by his employees in the course of their employment without regard to negligence and for the costs of medical attendance occasioned by the injuries. Section 27(a) provides that "No contract, rule or regulation shall exempt the employer from liability for the compensation fixed by this act". And § 58 provides that the commission shall have jurisdiction over claims for compensation for injuries suffered outside the state when the employee's contract of hire was entered into within the state. See *Quong Ham Wah* v. *Industrial Accident Comm'n*, 184 Cal. 26. Both statutes are compensation acts, substituted for the common law remedy for negligence. The California Act is compulsory. § 6(a). The Massachusetts Act is similarly effective unless the employee gives notice not to be bound by it, which in this case he did not do. § 24.

Petitioner, which as insurance carrier has assumed the liability of the employer under the California Act, relies on the provisions of the Massachusetts Act that the compensation shall be that prescribed for injuries suffered in the course of the employment, whether within or without the state. It insists that since the contract of employment was entered into in Massachusetts and the employer consented to be bound by the Massachusetts Act, that, and not the California statute, fixes the employee's right to compensation whether the injuries were received within or without the state, and that the Massachusetts statute is constitutionally entitled to full faith and credit in the courts of California.

We may assume that these provisions are controlling upon the parties in Massachusetts, and that since they are applicable to a Massachusetts contract of employment between a Massachusetts employer and employee, they do not infringe due process. *Bradford Electric Light Co.* v. *Clapper*, 286 U. S. 145, 156, *et seq.* Similarly the constitutionality of the provisions of the California statute awarding compensation for injuries to an employee occurring within its borders, and for injuries as well occurring elsewhere, when the contract of employment was entered into within the state, is not open to question. *Alaska Packers Association* v. *Industrial Accident Comm'n*, 294 U. S. 532; *New York Central R. R. Co.* v. *White*, 243 U. S. 188; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219.

While in the circumstances now presented, either stat
system for administering workmen's compensation permitte
be free to adopt and enforce the remedy provided by the
of the other, here each has provided for itself an exclusive
for a liability which it was constitutionally authorized to
But neither is bound, apart from the compulsion of the fu
and credit clause, to enforce the laws of the other, *M*
County v. *White Co.*, 296 U. S. 268, 272; and the law of nei
by its own force determine the choice of law to be applie
other. Cf. *Ohio* v. *Chattanooga Boiler & Tank Co.*, 289 U
Petitioner, pointing to the conflict between the provision
two statutes, insists that the full faith and credit clause
recognition of the Massachusetts statute as providing the e
remedy and as a defense to any proceeding for the award
pensation under the California Act. The Supreme Court
fornia has recognized the conflict and resolved it by hold
the full faith and credit clause does not deny to the courts
fornia the right to apply its own statute awarding comp
for an injury suffered by an employee within the state.

To the extent that California is required to give full f
credit to the conflicting Massachusetts statute it must b
the right to apply in its own courts its own statute, constit
enacted in pursuance of its policy to provide compensation
ployees injured in their employment within the state.
withhold the remedy given by its own statute to its resi
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rendered to the injured employee, and it must remit him t
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provided. We cannot say that the full faith and credit cl
so far.

While the purpose of that provision was to preserve r
quired or confirmed under the public acts and judicial pr
of one state by requiring recognition of their validity in oth
the very nature of the federal union of states, to which are
some of the attributes of sovereignty, precludes resort to
faith and credit clause as the means for compelling a state
tute the statutes of other states for its own statutes dealin
subject matter concerning which it is competent to legislate
pointed out in *Alaska Packers Association* v. *Industrial*

Comm'n, *supra*, 547: "A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own". And in cases like the present it would create an impasse which would often leave the employee remediless. Full faith and credit would deny to California the right to apply its own remedy, and its administrative machinery may well not be adapted to giving the remedy afforded by Massachusetts. Similarly, the full faith and credit demanded for the California Act would deny to Massachusetts the right to apply its own remedy, and its Department of Industrial Accidents may well be without statutory authority to afford the remedy provided by the California statute.

It has often been recognized by this Court that there are some limitations upon the extent to which a state may be required by the full faith and credit clause to enforce even the judgment of another state in contravention of its own statutes or policy. See *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265; *Huntington* v. *Attrill*, 146 U. S. 657; *Finney* v. *Guy*, 189 U. S. 335; *Milwaukee County* v. *White Co.*, *supra*, 273 *et seq.*; see also *Clarke* v. *Clarke*, 178 U. S. 186; *Olmsted* v. *Olmsted*, 216 U. S. 386; *Hood* v. *McGehee*, 237 U. S. 611; cf. *Gasquet* v. *Fenner*, 247 U. S. 16. And in the case of statutes, the extra-state effect of which Congress has not prescribed, as it may under the constitutional provision, we think the conclusion is unavoidable that the full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events.

This Court must determine for itself how far the full faith and credit clause compels the qualification or denial of rights asserted under the laws of one state, that of the forum, by the statute of another state. See *Alaska Packers Association* v. *Industrial Accident Comm'n*, *supra*, 547. But there would seem to be little room for the exercise of that function when the statute of the forum is the expression of domestic policy, in terms declared to be exclusive in its application to persons and events within the state. Although Massa-

chusetts has an interest in safeguarding the compensation of Massachusetts employees while temporarily abroad in the course of their employment, and may adopt that policy for itself, that could hardly be thought to support an application of the full faith and credit clause which would override the constitutional authority of another state to legislate for the bodily safety and economic protection of employees injured within it. Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power. Considerations of less weight led to the conclusion, in *Alaska Packers Association* v. *Industrial Accident Comm'n, supra*, that the full faith and credit clause did not require California to give effect to the Alaska Compensation Act in preference to its own. There this Court sustained the award by California of the compensation provided by its own statute for employees where the contract of employment was made within the state, although the injury occurred in Alaska, whose statute also provided compensation for the injury. Decision was rested explicitly upon the grounds that the full faith and credit exacted for the statute of one state does not necessarily preclude another state from enforcing in its own courts its own conflicting statute having no extra-territorial operation forbidden by the Fourteenth Amendment, and that no persuasive reason was shown for denying that right.

Bradford Electric Light Co. v. *Clapper, supra*, on which petitioner relies, fully recognized this limitation on the full faith and credit clause. It was there held that a federal court in New Hampshire, in a suit brought against a Vermont employer by his Vermont employee to recover for an injury suffered in the course of his employment while temporarily in New Hampshire, was bound to apply the Vermont Compensation Act rather than the provision of the New Hampshire Compensation Act which permitted the employee, at his election, to enforce his common law remedy. But the Court was careful to point out that there was nothing in the New Hampshire statute, the decisions of its courts, or in the circumstances of the case, to suggest that reliance on the provisions of the Vermont statute, as a defense to the New Hampshire suit, was obnoxious to the policy of New Hampshire. The *Clapper* case cannot be said to have decided more than that a state statute applicable to employer and employee within the state, which by its terms provides compensation for the employee if he is injured in the course of his

ployment while temporarily in another state, will be given full
th and credit in the latter when not obnoxious to its policy. See
alford Electric Light Co. v. *Clapper, supra*, 161.
Here, California legislation not only conflicts with that of Massa-
setts providing compensation for the Massachusetts employee if
jured within the state of California, but it expressly provides,
r the guidance of its own commission and courts, that "No con-
act, rule or regulation shall exempt the employer from liability
r the compensation fixed by this Act". The Supreme Court of
alifornia has declared in its opinion in this case that it is the
olicy of the state, as expressed in its Constitution and Compensa-
on Act, to apply its own provisions for compensation, to the ex-
usion of all others, and that "It would be obnoxious to that policy
o deny persons who have been injured in this state the right to
pply for compensation when to do so might require physicians
nd hospitals to go to another state to collect charges for medical
are and treatment given to such persons."
Full faith and credit does not here enable one state to legislate
or the other or to project its laws across state lines so as to pre-
lude the other from prescribing for itself the legal consequences
f acts within it.

Affirmed.

Mr. Justice FRANKFURTER took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.